



**MILWAUKEE PUBLIC SCHOOLS**

**DOCKET FILE COPY ORIGINAL**

**DEPARTMENT OF TECHNOLOGY**

Central Services  
5225 West Vliet Street  
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Milwaukee, Wisconsin 53201-2181  
Area 414-475-8315

*Children First*

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August 18, 2004

**VIA United States Postal Service Express Mail**

Federal Communications Commission  
Office of the Secretary  
445 - 12th Street, SW  
Washington, DC 20554

**RE: CC Docket No. 02-6  
Request for Review**

**SLD Action Being Appealed:**

**Applicant Name:**  
**Entity Number:**  
**Form 471 Application Numbers:**  
**Funding Request Numbers:**  
**Funding Year:**  
**Service Provider Name:**  
**Contact for this Appeal:**

**Administrator Decisions on Appeal  
dated June 25, 2004**

**Milwaukee Public Schools  
132882  
See Table Below  
See Table Below  
FY 2003 (July 1, 2003—June 30, 2004)  
See Table Below  
James E. Davis  
Director of Technology  
Milwaukee Public Schools  
P.O. Box 2181  
Milwaukee, WI 53201-2181  
Telephone: 414-475-8246  
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<b>Form 471 Application Number</b>	<b>Funding Request Number</b>	<b>Service Provider Name</b>	<b>Pre-discount Amount</b>
362581	982951	Berbee Information Networks Corp.	\$210,000.
354664	984067	Town & Country Electric	\$68,757.
355983	965238	D.S. Electrical Contractors, Inc.	\$46,350.
356089	965311	D.S. Electrical Contractors, Inc.	\$48,911.
356103	965362	Staff Electric	\$79,580.
356482	967439	Connectivity Solutions, Inc.	\$45,315.
354623	964529	Wil-Surge Electric, Inc.	\$43,931.
356466	967389	Connectivity Solutions, Inc.	\$59,474.
356436	967355	Connectivity Solutions, Inc.	\$63,453.
356424	984385	Town & Country Electric	\$105,439
356146	967099	Wil-Surge Electric, Inc.	\$23,531.
356155	967154	Staff Electric	\$214,356.
356161	984291	Town & Country Electric	\$75,156.
356413	967260	Wil-Surge Electric, Inc.	\$97,560.
356151	967126	Connectivity Solutions Inc.	\$46,620.
356131	965976	Wil-Surge Electric, Inc.	\$51,260.
356508	967469	Wil-Surge Electric, Inc.	\$50,274.
359965	982446	Munger Technical Services	\$175,000.
355930	984144	Town & Country Electric	\$54,064.
355875	984361	Wil-Surge Electric, Inc.	\$68,771.
356526	1032400	Town & Country Electric	\$23,490.
360288	982852	AE Business Solutions dba Accounting Equipment Corp.	\$330,000.
360321	1040965	SBC Wisconsin	\$149,854.
356135	966044	D.S. Electrical Contractors, Inc.	\$51,779.
381644	1050699	WiscNet	\$205,500.
381593	1050584	TDS Net dba TDS Telecom	\$205,500.
356157	967216	Staff Electric	\$129,452.

To Whom It May Concern:

In funding commitment decision letters issued by the SLD on December 2, and December 16, 2003, the Milwaukee Public Schools (MPS) was denied funding for the E-rate Application Numbers and Funding Request Numbers cited above because the SLD claimed that "[N]o contract or legally binding agreement was in place when the Form 471 was filed."

The Milwaukee Public Schools appealed those decisions to the SLD in a letter dated January 29, 2004. In that letter of appeal, the Milwaukee Public Schools provided a legal opinion issued by the Milwaukee City Attorney's Office (enclosed) stating that, under Wisconsin law, MPS had a legally binding agreement with its vendors when the Form 471 was filed.

In Administrator Decision Letters dated June 25, 2004, the SLD denied the appeal for the Application Numbers and Funding Request Numbers cited above stating once again that "Since a legally binding agreement was not in place as of this date [February 6, 2003], the appeal is denied."

Since legally binding agreements did indeed exist, we now seek a Request for Review of the SLD's decision in this matter from the Federal Communications Commission.

### **Background:**

The FCC Form 471 Instructions for Funding Year 2003 (dated December 2002) gave the following instructions with respect to signed contracts:

**"Signed Contracts:** You MUST have a signed contract (or a legally binding agreement between you and your service provider preparatory to a formal signed contract) for all services you order on your Form 471 except:

- *Tariffed services:* Telecommunications services that you purchase at prices regulated by your state regulatory commission and/or the FCC, which do not require a signed written contract.
- *Month-to-Month Services:* Month-to-Month services which do not require a signed, written contract. Your billing arrangement signifies that you are receiving your services on a month-to-month basis.

Note: You must file a Form 470 and seek competitive bids for tariffed or month-to-month services each funding year." <sup>1</sup>

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<sup>1</sup> FY 2003 Form 471 Instructions, pages 20 and 21.

**The SLD's Denial:**

As discussed above, the funding requests were initially denied on the basis that legally binding agreements were not in place at the time of the Form 471 filing. In our appeal, we explained that legally binding agreements were indeed in place, and provided documentation to that effect.

The SLD denied our appeal stating their finding that "Since a legally binding agreement was not in place as of this date [February 6, 2003], the appeal is denied." As stated in the enclosed legal opinion provided by the Milwaukee City Attorney's Office, under the laws of the State of Wisconsin, legally binding agreements were indeed in place. This opinion was provided in our appeal to the SLD.

The SLD, in their discussion of our appeal request, indicates that they will not consider the Opinion of the Milwaukee City Attorney regarding the laws of the State of Wisconsin since the Opinion was not provided during PIA review. The SLD's appeal decision, however, does not indicate that the appeal is denied because information was not provided during PIA review, but rather that there was no legally binding agreement in place. Without the opportunity to provide the Opinion of the Milwaukee City Attorney on this matter, we are left with no opportunity to provide evidence on appeal that, in fact, there were legally binding agreements in place at the time of our Form 471 filings.

**Public Interest:**

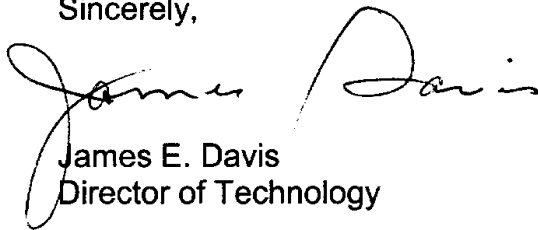
The Milwaukee Public Schools are currently facing a \$41 million deficit because of the shortfall caused by reductions in State funding. In fact, a new 15% tax was recently levied on the taxpayers of Milwaukee to help address this deficit. Further costs to the district caused by the denials of these funding requests for services already rendered will further burden the taxpayers of Milwaukee and are clearly not in the public's interest.

The Milwaukee Public Schools followed the Form 471 Instructions. Further, we provided evidence on appeal that legally binding agreements existed between the Milwaukee Public Schools and our Service Providers preparatory to formal signed contracts. Since there is no statutory requirement or FCC rule that codifies the SLD's procedure that this information can only be provided during PIA review, we are asking that you consider the enclosed opinion of the Milwaukee City Attorney in your review of this matter. Clearly, it is in the public interest for the FCC--especially during these unique budget times--to consider the procurement laws of the State of Wisconsin in making a funding decision regarding these E-rate eligible services that further the educational objectives of the Milwaukee Public Schools.

Federal Communications Commission  
Page 5  
August 18, 2004

The legal opinion of the City Attorney is enclosed. As you will see, the City Attorney concludes that the Milwaukee Public Schools "had a legally enforceable agreement in place with each of its selected vendors prior to the E-rate deadline." Therefore, we are asking that the FCC reverse the finding of the SLD that "there was not a legally binding agreement in place" for the applications cited above and award the funding commitments for these services.

Sincerely,

A handwritten signature in black ink, appearing to read "James Davis", with a large, stylized flourish at the end.

James E. Davis  
Director of Technology

Enclosure: Legal Opinion of the Milwaukee City Attorney

# CITY OF MILWAUKEE

GRANT F. LANGLEY  
City Attorney

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January 27, 2004

Ms. Michelle Nate  
Department of Finance  
Milwaukee Public Schools  
P.O. Box 2181  
Milwaukee, WI 53201-2181

Re: 2003 E-Rate Funding Contracting Issue

Dear Ms. Nate:

In December 2003, the Milwaukee Public School System ("MPS") received notice from the Universal Service Administrative Company that its Schools and Libraries Division ("SLD") was denying MPS' 2003 applications under the SLD's E-rate Program (the "Program") for funds to support MPS' E-rate eligible services. As the basis for its denials, the SLD stated that MPS did not, as is required by the Program's guidelines, have either an executed contract or a legally binding agreement in place with its selected vendors prior to February 6, 2003 – the closing date of the Program's application window (the "E-rate Deadline").

In a telephone conference on January 8, 2004, you asked our office to provide a legal opinion as to whether MPS had a legally binding agreement with its vendors prior to the E-rate Deadline. Pursuant to your request, we are offering the following opinion:

Under Wisconsin law, a contract can be formed even though the formal written notice of award has not been sent or the formal contract executed. This view on public contracting was first set forth over 70 years ago in the case of *L.G. Arnold, Inc. v. Hudson*, 215 Wis. 5, 254, N.W. 108 (1934), and was reaffirmed four decades later in *Nelson, Inc. v. Sewerage Commission of Milwaukee*, 72 Wis.2d 400, 241 N.W.2d 390 (1976), and *City of Merrill v. Wenzel Brothers, Inc.*, 88 Wis.2d 676, 277 N.W.2d 799 (1979).

In Wisconsin, competitive bidding requirements are intended for the benefit and protection of the public. They are designed to protect fraud, collusion, favoritism and improvidence in the administration of public business as well as to insure that the public receives the best work or supplies at the most reasonable price practicable. See *Aqua-Tech, Inc. v. Como Lake Protection & Rehabilitation Dist.*, 71 Wis.2d 541, 2239 N.W.2d 25 (1976).

YRL Appeals  
Form CA-43

BEVERLY A. TEMPLE  
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ROXANE L. CRAWFORD  
SUSAN D. BICKERT  
HAZEL MOSLEY  
HARRY A. STEIN  
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THOMAS J. BEAMISH  
MAURITA F. HOUREN  
JOHN J. HEINEN  
MICHAEL G. TOBIN  
DAVID J. STANOSZ  
SUSAN E. LAPPEN  
JAN A. SMOKOWICZ  
PATRICIA A. FRICKER  
HEIDI WICK SPOERL  
KURT A. BEHLING  
GREGG C. HAGOPIAN  
ELLEN H. TANGEN  
MELANIE R. SWANK  
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EDWARD M. EHRlich  
LEONARD A. TOKUS  
MIRIAM R. HORWITZ  
MARYNELL REGAN  
G. O'SULLIVAN-CROWLEY  
DAWN M. BOLAND  
KATHRYN M. ZALEWSKI

Assistant City Attorneys

Guided by such public policy considerations, Wisconsin is among those states which hold "that the acceptance of a valid bid by the proper municipal authorities, where all legal requirements are observed, constitutes a binding contract." *Merrill* at 686 citing 10 McQuillin, Municipal Corporations, s. 29.80 at 441 (3d ed. 1966). Moreover, a contract "may come into existence upon acceptance of a bid, even though as to certain formalities or details there has been a defective compliance with legal formalities or requirements." *Id.* at 686-687.

In the case at issue, it is our understanding that pursuant to its standard procurement procedures, MPS issued numerous Requests for Proposals ("RFPs") in 2003 for equipment and services that were eligible for reimbursement under the Program. The RFPs were posted on MPS' website, published in *The Daily Reporter*, and mailed to vendors who were on MPS' interested vendor list. Once received by MPS, the bid proposals were evaluated and scored by teams of 6 to 8 individuals.

Upon completion of the evaluations, the scores from each independent evaluator were totaled and the vendor with the highest score for each RFP was selected as the recommended 2003 vendor. Thereafter, MPS completed an application form (FCC Form 471) for each of the RFPs and submitted such applications to the FCC prior to the E-rate Deadline. In completing the applications, MPS listed the vendor it had selected for each of the respective RFPs.

It is also our understanding that formal written notices were not sent to the selected vendors notifying them of their selection. However, the selected vendors were given verbal notice of their selection when such vendors called MPS for feedback on their bid proposals. Further, it is our understanding that the Board did not formally approve the vendor selections until July 31, 2003, and the formal contract documents were not executed until several weeks thereafter.

In light of these circumstances, the issue of whether a legally binding agreement was in place before the E-rate Deadline hinges upon what point, under Wisconsin law, MPS accepted the offers made by the selected vendors in their respective bid proposals. Although none of the cases cited herein have identical circumstances, it is our opinion that a Wisconsin court could reasonably find that a legally binding agreement was formed at the point in time that the results of the evaluations were tallied and the "winning" vendors were selected.

In addition, our opinion is bolstered by MPS' overt act of listing the selected vendors on the Form 471s filed with the FCC. It is our belief that these Form 471s would have provided sufficient documentation for such vendors to have compelled MPS to execute the formal contract documents and similarly, have required such vendors to have performed such services or have provided such equipment as was set forth in the specifications of such vendors respective bid proposals. Therefore, we are of the opinion, that MPS had a legally enforceable agreement in place with each of its selected vendors prior to the E-rate Deadline.

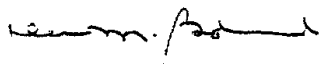
Ms. Michelle Nate  
January 27, 2004  
Page 3

If you have questions regarding this opinion or require any further assistance in this matter, please feel free to contact us.

Very truly yours,



GRANT F. LANGLEY  
City Attorney



DAWN M. BOLAND  
Assistant City Attorney

1034-2003-3978/77230